

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID MADDOX,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

CASE NO. 1:02-CV-05225-DLB PC

ORDER DENYING UNITED STATES
MARSHAL'S REQUEST FOR
REIMBURSEMENT

(DOC. 110)

Plaintiff is a California state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The United States Marshal ("Marshal") was directed to serve process on Defendant W. Young on March 2, 2010. Doc. 103. Pending before the Court is the Marshal's request for reimbursement of costs for effecting personal service on Defendant Young, filed November 29, 2010. Doc. 110.

Rule 4(d) of the Federal Rules of Civil Procedure provides in part:

An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons

...
If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant . . . the expenses later incurred in making service.

The Marshal requests that the Court impose costs on Defendant Young for his failure to avoid unnecessary expenses. On November 29, 2010, the Marshal filed a USM-285 form indicating that a Waiver of Service form was mailed to Defendant on March 9, 2010. Doc. 110. Personal service was effected on November 18, 2010 with costs of \$55.50. *Id.*

1 Defendant Young filed an answer to Plaintiff's second amended complaint on March 23,
2 2010. Pursuant to the Court's March 2, 2010 Order, the United States Marshal was not required
3 to personally serve Defendant Young if Defendant appeared in this action by filing an answer.
4 See Order 4:17-19, Doc. 103. Thus, the United States Marshal effecting personal service was
5 unnecessary.

6 Based on the foregoing, it is HEREBY ORDERED that

- 7 1. The United States Marshal's request for reimbursement for costs of personal
8 service on Defendant W. Young, filed November 29, 2010, is denied; and
- 9 2. The Clerk is directed to serve a copy of this order on the United States Marshal,
10 Sacramento, California.

11
12 IT IS SO ORDERED.

13 Dated: May 12, 2011

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE